IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 23 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
PRATIBHA SYNTEX LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT,learned advocate for Applicant(s) : 1,
Mr.Varun K.Patel, learned advocate, for MR SN SOPARKAR, learned senior advocate, for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. At the instance of Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has referred the following question of law for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (“the Act” for short):

> “Whether in the facts and circumstances of the case, the ITAT was justified in holding that the excise duty collected from the customers as a discharge of its statutory liability to excise department was not part of the total turnover despite explanation (ba) to Section 80HHC which, excluded only freight or insurance?”

2. This Court has heard Mr.M.R.Bhatt, learned counsel for the Revenue and Mr.Varun K.Patel, learned advocate, for MR S.N.Soparkar, learned senior advocate, for the respondent.

3. During the course of hearing of the case, the

learned counsel for the respondent has brought to the notice of this Court decision of the Suprme Court in **Commissioner of Income-Tax v. Lakshmi Machine Works, (2007) 290 ITR 667 (SC),** wherein following view is taken :

> "The principal reason for enacting a formula in section 80HHC of th Income-tax Act, 1961, is to disallow a part of the concession thereunder when the entire deduction claimed cannot be regarded as relating to exports. Therefore, while interpreting the words "total turnover" in the formula in section 80HHC one has to give a schematic interpretation. The various amendments made therein show that receipts by way of brokerage, commission, interest, rent, etc., do not form part of business profits as they have no nexus with the activity of export. The amendments made from time to time indicate that they became necessary in order to make the formula workable. If so, excise duty and sales tax also cannot form part of the "total turnover" under section 80HHC(3): otherwise the formula becomes unworkable."

4. In view of the authoritative pronouncement of law on the question referred to this Court for opinion, the Reference will have to be answered against the Revenue and in favour of the assessee.

5. Accordingly, it is held that the ITAT was justified in holding that excise duty collected from the customers as a discharge of its statutory liability to excise department was not part of the total turnover of the assessee despite explanation (ba) to Section 80HHC which, excluded only freight or insurance.

6. The Reference is answered against the Revenue and in favour of the assessee. There shall be no orders as to costs.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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